

MYRA SUN

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July 3, 2024

Molly C. Dwyer  
Clerk of the Court  
United States Court of Appeals for the Ninth Circuit  
95 7th St.  
San Francisco, CA 94103

Re: *United States v. Kendall Alston*, No. 23-30035  
Fed. Rule App. Proc. 28(j) submission  
Oral Argument – Seattle, Washington, Ctrm. 2, 7/10/24, 9 a.m.

Dear Ms. Dwyer:

This letter submits supplemental authority, under Fed. R. App. Proc. 28(j), for consideration at the oral argument in this case. It bears on the government's contention that Mr. Alston failed to adequately preserve an objection to the district court's instruction at his trial for violating 18 U.S.C. §924(c).

In *United States v. Rodriguez*, 880 F.3d 1151, 1158-1159 (9th Cir. 2018), interpreting Federal Rule of Criminal Procedure 30(d), this Court found sufficient a defense objection to a deficiency in a trial court reckless-disregard instruction: it did not tell the jury it had to find actual knowledge of the risk itself, not just the circumstances comprising the risk. This Court found that defense counsel made "patently clear that the substance of her objection was the failure of the district court's instruction to require awareness of the risk." And she "specifically repeated a request for an instruction requiring" actual knowledge.

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Here, Mr. Alson asked the district court to tell the jury that to find possession of the in furtherance of the charged drug crime, he had to have it “to advance or promote” his drug offense that day. Counsel made “patently clear...the substance of his position” – that the instruction was needed to support the defense that accessibility and environmental factors meant the government had not shown possession “in furtherance of” the charged drug crime. This adequately preserved his objection to the lack of an in-furtherance-of instruction.

Sincerely,

A handwritten signature in black ink, appearing to read "Myra Sun". The signature is fluid and cursive, with the first name "Myra" being more prominent than the last name "Sun".

Myra Sun  
Attorney at Law